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Protecting children and uniting families across borders
Protéger les enfants et réunir les familles au-delà des frontières
Proteger a los niños y reunir a las familias más allá de las fronteras

Geneva, the 24th of July 2013

Dear Henriette Braad Olesen,

Following the request of the Danish Government to contribute to the in depth analysis of the Danish adoption system with a special focus on intercountry adoption you are undertaking, we are very pleased to send you promising practices developed in various countries of origin for the six areas of focus. Annexes are attached to the original document providing more detail as to justify our choice of country – of course this is not an exhaustive list.

We hope this information will help you to indentify the countries you are going to visit in the framework of this valuable project. Needless to say, ISS stands ready to provide further information and analysis if required.

We also take this opportunity to remind you that ISS has acquired over several years of interventions a solid experience in supporting central authorities through different channels. This includes evaluations of existing adoption and child protection systems in a great number of countries (Ukraine, Moldavia, Kirgizstan, Kazakhstan, Vietnam, Colombia, Democratic Republic of Congo, etc.), provision of technical support to consolidate the adoption and alternative care systems (legal assistance in Vietnam, Cyprus for instance, training of the staff of adoption central authorities as in Madagascar, Azerbaijan, Peru, etc.).

We therefore reiterate our experience in the reform process you are currently undertaken and remain available to further support you in this ongoing project.

With best regards,

Mia Dambach and Cécile Jeannin
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ISS/IRC contribution to the in depth analysis of the Danish Adoption system

July 2013

Introduction

This document was prepared at the request of the Danish Central Adoption Authority currently examining its adoption system. It provides examples of countries which to some extent have implemented the promising practice evoked as compliant with THC-1993. Prior to publishing/citing any contents of this document – permission should be sought from ISS.[1]

1. Accession to THC-1993

In addition to the ratification of THC-1993 which is a fundamental element for selecting a country of origin, it is important that this international standard is in fact implemented on the ground. For example, a well functioning and resourced central adoption authority needs to be in place as well as the principle of subsidiarity respected.

Other guarantees that THC-1993 is being implemented include:

- the prohibition of independent and/or private adoptions – for more information about which countries include such prohibitions, see the *ISS/IRC Comparative paper v on interdiction of independent adoption*[2] (the use of this document is restricted to the donors of ISS/IRC programme, we therefore thank you very much not to publish/distribute it although reference to it can be made);
- programmes that allow children to:
  - ❖ remain with their families as a matter of priority - see examples of projects developed in Malaysia, Brazil and Indonesia to support families and prevent separation, available in "Moving Forward: Implementing the "Guidelines for the Alternative Care of Children"[3] p.57, p. 64 and p.70. Other examples of programmes preventing the separation of the family are available in the presentation of ISS/IRC during the 2009 meeting of the European central authorities, *A few good practices to promote the principle of subsidiarity*[4];
  - ❖ be fostered/adopted by families in their own country – see different practices developed by countries of origin in this area and presented by ISS/IRC during the 2009 meeting of the European central authorities, *A few good practices to promote the principle of subsidiarity*. Other examples of practices in different countries of origin are available in ISS/IRC's presentation during the

[1] Prepared by Cécile Jeannin and Mia Dambach
[2] See Annex 1
[3] See the enclosed hard copy
[4] See Annex 2

International Seminar of East European countries in Vilnius in 2011, *Sharing national experiences and good practices on searching for national prospective adoptive parents*[5]. Other examples of foster care projects developed in Colombia, Togo and Zimbabwe are available in "Moving Forward: Implementing the "Guidelines for the Alternative Care of Children" p. 93 and 94;

- a multi-disciplinary and professional matching of children - see for example the procedure consisting in reversing the flow of files implemented in the State of Rio Grande do Sul (Brazil) as described in ISS/IRC monthly review N°6/2005[6]. For other illustrations, please see description of the matching process established in Latvia[7], Philippines[8], Lithuania[9], South Africa[10], Colombia[11] as well as the specific matching process developed by Peru[12] for children with special needs as described in the various country situations;
- an adequate preparation of the child for the adoption - see for example the experience of Philippines presented in the ISS/IRC monthly review N°172, May 2013[13] as well as the experience of Chile (see country profile of Chile provided by the Hague Conference, p.9[14]), Lithuania[15] where the State child rights protection and adoption service in 2011 started a new training program for children home professionals in order to help them to prepare child for adoption, Colombia (see country profile of Colombia provided by the Hague Conference, p.11-12[16]). Other examples include Burkina Faso (see country profile of Burkina Faso provided by the Hague Conference, p.11[17]), Dominican Republic (see country profile of Dominican Republic provided by the Hague Conference, p.8[18]) etc;
- an efficient system of registration and monitoring of the orphanages, as a gap in this area can open the door to illegal adoptions – see examples of promising practices developed in Mexico, Israel and Namibia presented in the Moving Forward: Implementing the "Guidelines for the Alternative Care of Children" p. 111 and 112;
- the country is not the object of a suspension of adoptions, even if it is only by one receiving country;
- the country has not been denounced for proven and repeated cases of abuse – see for example the study published by ISS/IRC in 2012 *"Investigating the Grey Zones of Intercountry adoption"* that can be ordered at ISS/IRC as well as the websites of the **Schuster Institute,** under Fraud and corruption in intercountry adoptions, http://www.brandeis.edu/investigate/adoption/index.html and **Ethica**, an independent voice for ethical adoption, http://ethicanet.sitesteaders.com/.

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[5] See Annex 3
[6] See Annex 4
[7] See Annex 5
[8] See Annex 6
[9] See Annex 7
[10] See Annex 8
[11] See Annex 9
[12] See Annex 10
[13] See Annex 11
[14] See Annex 12
[15] See Annex 7
[16] See Annex 13
[17] See Annex 14
[18] See Annex 15

2. Intercountry adoption fees or contributions with funding of a child care programme

As stipulated in the concluding recommendation of the 2010 Special Commission on the practical operation of THC-1993, there is a need to have a "clear separation of intercountry adoption from contributions, donations and development aid" is part of a well regulated system."

Practical indications that this separation in fact exists can be seen at several levels:

- the country of origin does not allow one to make on-the-spot payments in cash without a receipt or witness, in cases, where proceeding by way of a bank transfer is not possible
- the AAB is not requesting fees in the country of origin that lack transparency with regards to their final purpose and/or are disproportionate to the local cost of living
- when there is no obligation foreseen by a law to make a donation in favor of the institution where the adopted child is staying. Such an obligation can be a sign that the adoption is a source of profit for the institution.

A recent example of a country that has implemented some of these practices above is mentioned in the ISS/IRC monthly review N°173 of June 2013[19] is Colombia who via its resolution Nº 4274 of 6 June 2013 reiterates the legal ban on the reception of donations prior to the adoption and in compensation for the placement of a child or adolescent in adoption. Another illustration is South Africa where there is no expectation of undertaking humanitarian projects as part of an intercountry adoption. See the country profile of South Africa provided by the Hague Conference, p.17[20], as well as the one of Estonia, p. 14[21].

3. Approval of future adoptive families that meet the needs of the child

On this point there are two important steps that need to be undertaken to ensure that an appropriate matching occurs.

Firstly the child's needs have to be professionally assessed and clearly communicated to the receiving country. Several countries have undertaken such a comprehensive assessment, allowing them to specify the detailed profiles of children in needs of intercountry adoption such as Latvia (see the fact sheet provided by the French mission of Intercountry adoption[22]), Colombia (see ISS/IRC monthly review N°173 of June 2013[23]), Dominican Republic[24] or Philippines[25].

Secondly, based on these needs an appropriate matching system has to be put in place – see the examples already mentioned in the first point of the document.

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[19] See Annex 16
[20] See Annex 17
[21] See Annex 18
[22] See Annex 19
[23] See Annex 16
[24] See Annex 20
[25] See Annex 6

4. Procedure of open adoptions including follow-up reports

According to the knowledge of ISS/IRC, New Zealand is a leading country for the practice of open adoption. An analysis of the best practice in this specific type of adoption in New Zealand is provided in the ISS/IRC monthly review N°1/2006[26]. You also can consult the country situation published by ISS/IRC on New Zealand[27]. Other experiences of openness in adoption exist in USA (see http://www.adoptioninstitute.org/policy/polopen.html[28]), South Africa where the parent or guardian of a child may before an application for the adoption of a child is made, enter into a post-adoption agreement (see Section 234 N° 38 of the Children's Act, 2005[29]) and Western Australia where Adoption Plans agreed to by those involved in an adoption exist. It means that everyone has an opportunity to agree on future contact and information exchange about the child. This agreement is documented in an Adoption Plan approved by the Family Court of Western Australia (see http://www.dcp.wa.gov.au/FosteringandAdoption/Pages/PregnantAndConsideringAdoption.aspx#11[30]).

5. Placing foreign children in adoptive families in an ethical justifiable manner

The ISS/IRC is of the view that the use of a i) central adoption authority or ii) AABs both have their role in ethical practices, without necessarily excluding the other. The important issue is to ensure that whatever body is used – either exclusively or dually it must be sufficiently resourced, trained and willing/able to apply THC-1993 principles. In countries where AABs are major actors of the intercountry adoption process an adequate system of authorisation, accreditation and supervision of the AABs have to exist and well implemented. Various examples of countries that have implemented such systems are mentioned in the Guide to Good Practice N° 2 of the Hague Conference on the Accreditation and Adoption Accredited Bodies such as Colombia, Lithuania and Philippines, see http://www.hcch.net/upload/adoguide2en.pdf, Annex 2, p.143-167[31]).

Other countries such as Australia that do not count on AABs have developed an excellent system of supervision of the all adoption process (see the example of the State of New South Wales, ISS/IRC ISS/IRC monthly review N°10/2009[32]). Another example of such practice is the one developed by the Flemish Central Authority, see the ISS/IRC monthly review of N°11-12/2010[33].

6. Construction of an intensified supervision in the field of intercountry adoption

As already mentioned above, an intensified supervision of the intercountry adoption system implemented by a country mainly requires:

- the prohibition of independent and private adoptions (see point 1);

[26] See Annex 21
[27] See Annex 22
[28] See Annex 23
[29] See Annex 24
[30] See Annex 25
[31] See Annex 26
[32] See Annex 27
[33] See Annex 28

- a strong central authority and, in case of applicable, a system of accreditation and monitoring of the AABs conform to the standards established by the Hague Conference in its Good Practice N° 2 on the Accreditation and Adoption Accredited Bodies (see point 5);
- a mechanism of complaints and sanctions in case of irregular practices in the adoption process – see examples of provisions established in the law of several countries at this purpose in the following document prepared by ISS/IRC in 2010, Legal analysis on the sale of children[34].

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[34] See Annex 29

ISS report in the frame of the in depth analysis of the Danish adoption system, with a special focus on intercountry adoption, International Reference Centre for the Right of Children Deprived of their Family (ISS/IRC), Genève, April 2014

ISS REPORT IN THE FRAME OF THE IN DEPTH ANALYSIS OF THE DANISH ADOPTION SYSTEM, WITH A SPECIAL FOCUS ON INTERCOUNTRY ADOPTION

TABLE OF CONTENT

PREFATORY NOTE:

The present report was commissioned by the Danish Central Authority for Intercountry adoption to ISS, in the frame of the ongoing analysis taking place in Denmark regarding Intercountry adoption. The title of each chapter corresponds to questions asked by the Danish Central Authority, including the short development mentioned below.
Considering the general nature of some of these questions, it was sometimes difficult to provide precise answers and information. In addition, some of the points raised are also closely related to the political orientations a receiving country may take with regards to its practice of Intercountry adoption. Thus, ISS refrained from giving too sharp answers, leaving room for discussions and reflexions.
The content of this report is based on the resources available in ISS, especially country reports and bibliographical database, but also on the experience of ISS staff gained in field missions.
In order to avoid unnecessary repetitions, references are made to other existing material of potential interest for the current exercise, in particular The Hague Guides to Good practice n°1 and n°2.

We do hope that this report will usefully contributes to the reflections currently going on in Denmark, and warmly thank the Danish Authorities for their confidence.

Geneva, April 2014

1. Which countries of origin shall Denmark cooperate with in the future, and in this context, the importance of the Convention?

- What is the significance attributed to the convention and should Denmark limit cooperation to countries of origin that have acceded the convention?

It is of course a difficult exercise to present an overview of adoption practices across the world, as every State, whether receiving or of origin, has its own regulations, practices and challenges. However, considering the general evolution of Intercountry adoption (hereafter: ICA) over the last decade, some trends can be identified.
The first one of them is of course the general decrease in the volume of ICA realised by the receiving States, with a more than 50% reduction between 2005 and 2012[1]. The causes behind this phenomenon are mainly due to the changes that occurred in several countries of origin, to make ICA rules stricter, to limit the number of foreign applications and give preference to national applicants, to combat illicit practices, fraud and corruption, and to comply with international standards, in particular The Hague Convention on protection of children and cooperation in respect of intercountry adoption (hereafter: THC-93) and the UN Convention on the Rights of the Child (hereafter: UNCRC).
These changes influenced in turn the global movements that can be observed in the origins of the children adopted abroad. Indeed, when a country of origin restricts its ICA procedure, the demand for adoptable children reorients itself to countries where access is easier (meaning where rules are less strict). This phenomenon explains why, today, African countries are more and more "exposed" to ICA, while many of them do not have the necessary child protection system in place to cope with the outside pressure.
The presentation of the countries of origin below is based on the 2012[2] statistics of the main 12 receiving countries, and gives a good overview of the situation prevailing in the major countries of origin.

[1] For the 12 first receiving countries, 42'895 ICA were processed in 2005, and 19'047 in 2012. Source: ISS/IRC Monthly Review n° 176, October 2013.
[2] 2013 global statistics will only be available in the second half of 2014.

1.1. Short overview of the major countries of origin applying THC-93 (2012 statistics)

The first group of countries of origin encompasses those which have ratified the THC-93 and are among the first 10 countries of origin for the main receiving countries, according to the 2012 statistics (see table 1 below p. 23). They are then grouped into three (subjective) categories, depending on the development of good practices, encouraging progresses and exposure to bad practices.

- **Development of good practices:**

The Philippines, Brazil, Thailand, South Africa, Poland and Latvia went through fundamental changes in their adoption practices over the last years. By giving priority to domestic adoption, today, these countries have a limited number of children in need of ICA, and most of them are special needs children. If this is a clear progress in terms of a child protection system, from the perspective of receiving countries, it creates new challenges. Indeed, the profile of the children proposed for ICA is sometimes very "heavy" in terms of medical conditions, age, sibling groups and life experience. It becomes then more difficult to find adoptive parents ready and able to adopt these children, and their settlement in the receiving country may induce important costs (medical treatments, post-adoption services, etc.). Thus, it becomes more and more difficult to match the countries of origin child proposals with the expectations of prospective adoptive parents (hereafter: PAPs).
The development of this practice is also questioned by some professionals in the receiving countries, as sometimes the effective possibility for adoption placement abroad is seen as unrealistic, considering the profile of the children proposed. Nevertheless, if the promotion of domestic adoption is clearly a great advancement for children deprived of parental care, national alternative care measure for children with special needs should also be further developed for special needs children.

- **Encouraging progresses:**

Colombia. The country adopted a set of reforms mid-2014 to "(1) temporarily suspend for a period of two years the reception in Colombia of new adoption applications submitted by families with habitual residence abroad, who wish to adopt healthy children between the ages of 0 and six years without any special characteristics or needs; (2) ban the funding of humanitarian aid projects by accredited adoption bodies with resources from adoptive families or families in an adoption process; (3) request, from accredited adoption bodies, the registration of the costs pertaining to the adoption in the form established by the ICBF; (4) strengthen, jointly with the Competent Authorities and accredited adoption bodies, the processes of preparation, assessment, selection of families and submission of psychosocial reports in accordance with the Colombian technical guidelines, in order to avoid an increase in costs for the families and ensure a better integration among the children and their adoptive families; (5) reiterate the legal ban on the reception of donations prior to the adoption and in compensation for the placement of a child or adolescent in adoption"[3].
Despite a robust social protection system, Colombia was the last country in the South American continent with a persistent high number of ICA per year. These reforms should allow for more reflections about the role and place of ICA in the Colombian child protection system.
Vietnam: after ratifying the THC-93 and adopting a new law on adoption (2010 and 2011), Vietnam has slowly restarted ICA procedures, by trying at the same time to give priority to domestic adoption and proposing children with special needs to ICA. There are still important challenges to be solved in the country, especially due to the administrative structure of the system, which comprises more than 60 provinces in the country, being primarily responsible for child protection issues. Training and dissemination of good practices are still needed, but the authorities in charge at country level (MOLISA and MoJ) are showing strong commitment in making children's rights advancing.

[3] ISS/IRC Monthly Review n° 173, June 2013.

Guatemala: the country also went through drastic reforms in the sphere of adoption and child protection. It restarted ICA slowly, trying to promote domestic adoption and ICA for special needs children.

- **Exposed to bad practices:**

China [4]**:** More children have been adopted from China than from any other country, and this is so, even with the number of ICA falling considerably in recent years (11 000 in 2003, 5294 in 2009, 3998 in 2012). As a way to control ICA volume, only nationals from States with an existing bilateral agreement with China are able to submit an adoption application[5].

A number of reports have highlighted and criticized the matching procedure, considered inadequate for the child and the adoptive family. Indeed, reports have been issued in relation to the visits of applicants to orphanages, where they "select" a child, as well as with regards to the "selection" carried out by the institution's staff. In addition, the fees required by some actors involved in the adoption process reach high amounts and their aim and use remain very uncertain. Furthermore, other issues relating to the adoption procedure still remain without a reply or without satisfactory attention, such as:

- the incomplete prior medical examinations of adoptable children and the necessary improvement in the information provided to prospective adopters;
- the guidance provided to the parents of origin in all the pre-adoptive proceedings and the support offered throughout the process, with adequate psychosocial support, necessary advice, etc.;
- the prevention of abandonment, amongst other issues, in order to ensure that a greater number of girls are registered and benefit from the attention they require and that care measures are considered.

Finally, it should be noted that The Ministry of Civil Affairs and the China Centre for Children's Welfare and Adoption (CCCWA) have revised adoption measures to combat child trafficking. China has indeed been affected by several child abduction scandals by Family Planning officials in cases where parents did not respect the one child policy and were not able to pay the fixed fine. Among the new rules include strengthening orphanages which become the only institutions where children can be adopted from. Moreover, the law targets "illegal adoptions", in other words when adoptive parents adopt a child without being registered. This reform was introduced after a study revealed that in Chongqing municipality from 1995 to 2005 about 19 800 children were adopted illegally whereas only 5100 were registered with the local civil affairs departments. However, cases of abuses are still reported[6]. As for statistics, 63% of Chinese children adopted in 2010 worldwide had special needs (children with disabilities, children over the age of 7). This proportion is likely to rise as China has opened up the adoption of children with special needs to single women and has specifically invited France, amongst other countries, to steer people wishing to adopt towards this category of children.

India: despite a long-lasting history of ICA, India still faces problems in its adoption system. It seems that the administration and social services have great difficulties in implementing the new Guidelines issued in 2011. In addition, bad practices continue to affect the adoption process in some provincial states[7].

Mali: in 2012, the Parliament decided to take adoption out of the civil code, considering that Mali is a Muslim country and that Islam does only allow for kafala (and not adoption). It is not known if this decision will be changed in a near future. This creates a situation of confusion regarding cases in transition, and children whose Muslim background is unknown, which, in turn, might open the door for "exceptions".

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[4] ISS/IRC Country situation , February 2012

[5] These are the following 16 States: Australia, Belgium, Canada, Denmark, Spain, United States, Finland, France, Ireland, Iceland, Italy, Luxembourg, Norway, New Zealand, United Kingdom, Singapore and Sweden

[6] American media article about China's ICA program, i.e. the kidnapping of children and being sold to Chinese orphanages, then adopted overseas. http://www.theatlantic.com/china/archive/2013/07/kidnapped-and-sold-inside-the-dark-world-of-child-trafficking-in-china/278107/

[7] See for instance: ''Overseas adoption racket: How children are sneaked out by the hundreds" http://www.firstpost.com/india/overseas-adoption-racket-how-indian-children-are-sneaked-out-in-hundreds-632770.html

1.2. Short overview of the major countries of origin NOT applying THC-93 (2012 statistics)

Ethiopia, the Russian Federation, South Korea, Ukraine and DRC Congo had the biggest share for ICA outside of the convention in the period considered. They are grouped according to the same criteria as above.

- **Development of good practices:**

South Korea: the country signed the THC-93 in May 2013, with the intention to ratify in a near future. This major step forward is going together with legal reforms regarding children born out of wedlock and unmarried mothers, two issues that have been a social taboo for years in the country. Depending on how the new measures will be implemented, one can imagine a decrease in the need for ICA in the future.

- **Encouraging progresses:**

Haiti: after years of difficulties in ICA, the country ratified THC-93, which entered into force last year, together with its application law. The new central authority does not save any efforts to put in place a robust ICA system, but the global economic context and the demand for adoptable children are still huge challenges to face. The system of quota introduced should help to keep ICA at a reasonable level for the coming years.
Ghana: the country is preparing the ratification of THC-93 (with the support of UNICEF and ISS). The convention should enter into force this year, but it is anticipated that ICA will restart slowly, to enable the professionals in charge to get used to the new system.

- **Exposed to bad practices:**

Ethiopia: As Ethiopia continues to be a popular country of origin, it is essential to understand the current reform realities of alternative care and adoption in the country. Different projects have been undertaken in the last couple of years some of which are ongoing (e.g.: development of a national database and census on number of institutions), whilst others have not been completed, although reports have been written (e.g.: development of procedural manual on the adoption process as well as a mapping exercise to develop a national alternative care strategy). In the meantime, other projects are in the pipeline such as reforms of the 2009 alternative care guidelines. With this hustle and bustle of reforms – in principle, a very positive step indeed - a major concern of ISS is that an overall strategy on alternative care in Ethiopia does not exist to ensure that all these various reforms are going in the same direction and gaps in service provision can be avoided. Other concerns include *inter alia*, the non-existent central adoption authority as well as only one judge processing cases at the Federal First Instance Court – such limited resources makes it difficult to comprehensively verify each file. Whilst other judges have been trained, they are not yet operational (as far as ISS knows). In such a turbulent context, the Australian Government ceased its adoption programme in Ethiopia in July 2012, noting "an increasingly unpredictable, complex and uncertain adoption environment in Ethiopia" and "long waits and uncertainty for PAPs" among multiple other reasons[8].
ICA from Ethiopia has been a source of concerns for several years now, including in Denmark. The system is known for not presenting enough guarantees, especially in terms of birth parents' consent, surveillance of institutions for children, insufficient resources in the public administration and the judiciary, etc. Despite repeated efforts from international organizations like UNICEF and The Hague Permanent Bureau, the Ethiopian Government seems not to be ready in tackling ICA and reform its system, its interventions being too limited so far. Beginning of this year, a moratorium on ICA was even discussed among certain actors in Ethiopia[9].

[8] http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/CountryPrograms/Pages/Ethiopia.aspx
[9] "Ethiopia: Stakeholders, Public Has to End Foreign Adoption" http://allafrica.com/stories/201312260586.html

The Russian Federation: ICA has clearly become a political topic, considering how the country is "instrumentalising" the issue in its diplomatic relationships. The Russian's ban on US adoptions has very little to do with child protection, and was accompanied by a massive propaganda in the country. There is also a political will to keep Russian children in their home country, by giving preference to national adopters. If ICA figures were drastically reduced from 2004 (9472 ICA) to 2012 (2434 ICA), it is not known whether this was accompanied by an equivalent increase in domestic adoption. In addition, the medical conditions of the children proposed to ICA remain a source of concern for the receiving countries, especially due to the often poor quality of the medical files.

Ukraine: given the current instability in the country, Ukraine should not be considered as open to ICA for the moment. The Ukrainian adoption system was also known for its lack of transparency, especially regarding consent of birth parents, medical file and costs.

DRC Congo: ICA has been skyrocketing in 5 years, from 42 ICA in 2008 to 516 in 2012. ISS/IRC evaluation mission in 2012 confirmed the total absence of guarantees in the ICA procedures, especially the inadequate legal framework, the absence of professional matching, the conflicts of interests and corruption, etc. The presence in the country of more and more foreign adoption agencies is seen as an opportunity to process more and more ICA and make more and more money by the different actors involved. It is not known if the Congolese decision to suspend ICA in September last year will allow for significant improvements.

Nigeria: processing ICA in the country remains complicated due to its federal structure (each state has its own regulations for family right and adoption), movements of population within the country (because of religious tensions in some states) and repeated documented abuses[10].

Central African Republic: due to the current context of violence, the country shall be considered as closed to ICA[11].

Taiwan has been processing ICA in an even manner for several years now. The 2011 Law on the welfare of the child introduced the interdiction of private/individual adoption. However, information remains difficult to access.

1.3. Within or out of The Hague

To date[12], the THC-93 is in force in 92 States, among which one third can be considered as receiving countries and two thirds as countries of origin. If this is of course a major achievement, the following points give a more nuanced view on the situation.

- **More ratifying States does not mean automatically more ICA processed under the Convention**

When considering the 2012 global statistics[13], it can be observed that among the first 24 countries of origin (in terms of number of ICA), 10 have not ratified the treaty (equivalent to 40%). But in terms of figures, those same 10 countries account for 8105 ICA, representing 51% of the 2012 ICA total. In addition, among the 6 countries where ICA figures increased, 4 are out of the scope of the convention. So, despite the fact that every receiving country has ratified the THC-93, the latter still adopt more outside of the scope of the treaty.

More worrying is the presence of 4 countries in the top 24 list, where significant social and political turmoil took place before, during or after the period considered (DRC Congo, Nigeria, Mali, and Central African Republic).

[10] http://www.lexpress.fr/actualite/monde/afrique/nigeria-17-adolescentes-enceintes-liberees-d-une-usine-a-bebes_1247798.html#xtor=AL-447.

[11] See the decision of France for instance: http://lci.tf1.fr/monde/afrique/la-france-suspend-les-adoptions-d-enfants-de-nationalite-centrafricaine-8349254.html

[12] March 2014 ; see : http://www.hcch.net/index_fr.php?act=conventions.status&cid=69

[13] See table 1 and 2 p.23

- **Hague ratification does not mean total absence of risks**

As stated in the introduction of the ISS/IRC study about the grey zones of Intercountry adoption, "after eighteen years of practice, it seems that THC-93 has started to suffer from "too good a reputation." In fact, its ratification, especially by a country of origin, is too often seen as a "guarantee of good practice" by many actors. Because receiving countries often assume that a Hague adoption procedure encompasses all the necessary guarantees for the child and his/her family's safety, receiving States are often tempted to not look beyond what is said in the child's file. Daily routine, difficulties in cross-checking information about the child, the speed of the process once the matching is proposed can make people in charge less attentive to risks when dealing with a contracting State.
(…) The THC-93, as a private international law instrument, does not aim to cover all issues surrounding the adoption process, especially the different steps taking place before the child enters the adoption system. For instance, if official documents declare that a child is an orphan, but in reality, the child was stolen from his/her parents, the THC-93 is of no use in this case, as it does not cover the questions of birth registration and civil registry"[14].

- **Application of Convention principles to non-Convention countries**

It is the responsibility of the receiving states that have implemented THC-93 to ensure the same guarantees of the safety and well-being of all children regardless of whether the child comes from another Convention country or a non-Convention country. From a receiving country's point of view, ratifying THC-93 means that its general principles (rather than procedures) have to be applied even when the country of origin has not ratified the convention. It would be contrary to the non-discrimination principle to apply these general principles to the procedures under THC-1993 and not apply them in non-Convention countries[15].
When a non-party State is unable to furnish such guarantees on its own, they should be implemented jointly by the adoption agencies, their representatives and local partners. In this case, the supervision of ICA from/to those countries must be particularly strict, especially regarding the number of authorisations for adoption that are delivered.
Some major inter-governmental bodies have already expressed this concern. In its 2 December 1999 report, the Parliamentary Assembly of the Council of Europe "calls on the Committee of Ministers of the Council of Europe to give a clear indication of its political will to ensure that children's rights are respected, by immediately inviting the member states to ratify the Hague Convention on Adoption if they have not already done so, and undertake to observe its principles and rules even when dealing with countries that have not themselves ratified it"[16].
It was also recalled at the first Special Commission on ICA in 2000: "Recognising that the Convention of 1993 is founded on universally accepted principles and that States Parties are "convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic of children", the Special Commission recommends that States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States. States Parties should also encourage such States without delay to take all necessary steps, possibly including the enactment of legislation and the creation of a Central Authority, so as to enable them to accede to or ratify the Convention (para. 56)[17].

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[14] "Investigating the grey zones of Intercountry adoption". ISS/IRC, 2012. Available at: http://www.iss-ssi.org/venteonline/?&id_lang=2
[15] Vité S. and Boéchat H., A commentary on the United Nations Convention on the Rights of the Child, Article 21, 2007.
[16] Report of Social, Health and Family Affairs Committee, 'International adoption: respecting children's rights', Doc. 8592, 2 December 1999
http://assembly.coe.int//Mainf.asp?link=http://assembly.coe.int/Documents/WorkingDocs/doc99/EDOC8592.htm
[17] Report and Conclusions of the Special Commission, April 2001,
http://hcch.e-vision.nl/index_en.php?act=publications.details&pid=2273&dtid=2 or

1.4. Preliminary conclusions on "which countries of origin shall Denmark cooperate with in the future, and in this context, the importance of the Convention?"

- The decision to cooperate or not with any given country of origin is complex and pertains to the central authority of the receiving country concerned.
- In any case, cooperation with any country of origin asks for an in depth knowledge of its social, political and economic context, and its capacity to have a proper child protection system in place, or at least a proper adoption system. If this is not the case, analysis must go even deeper, and shall include the reliability of local partners, the risks of fraud and corruption, the origin of children proposed to ICA, etc.
- THC-1993 principles shall apply to any ICA procedure, being it from a country of origin that has ratified the treaty or not.
- Cooperation with contracting states of origin offers much more guarantees in terms of reliable and identified persons and institutions in charge, professional matching, limitation of costs, etc. However, the ratification of THC-1993 in itself is not a guarantee for a fully ethical procedure.

www.iss-ssi.org/Resource_Centre/Tronc_CI/reportspecom2000.PDF, para. 56, recommendation n°11.

2. The linking of ICA fees or contributions with funding of a child care programme

- Should it continuously be acceptable for Danish AAB to make contributions for child care programmes as part of the ICA process? Or should new rules be made, so that these activities cannot be linked?

The evolution of ICA – in its understanding and its practice – benefits from the progress inherent to our internationalised society. Transport and communications contribute to bringing countries of origin and receiving countries closer, thus encouraging the spirit of cooperation which supports international texts governing adoption, whether the CRC or THC-1993. These means should enable to strengthen, even further, cooperation amongst States, in the increasingly sensitive and changing field of ICA. However, the evolution of ICA during these recent years, has given rise, to ever more questioning about the concept itself of co-operation in this particular context. What direction to give it according to what we attach to the direction that the Hague Convention gives it, whether one finances projects linked or not to adoption, whether one be the central authority or an adoption agency etc.?

Note: *the "2010 Guide for good practices concerning accreditation of approved intermediaries" published by The Hague Permanent Bureau gives an extensive analysis of the issue of "contributions and donations"(chapter 9). Limited references are made here to this document to avoid unnecessary repetitions.*

2.1. Cooperation: the founding principle of the CRC and the THC

- The CRC : In its broadest acceptance co-operation comes close to the development area: the CRC envisages it as a means of support in the face of a lack of resources in the poorest of countries. Its preamble states, for instance "Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries"[18]. This first definition supposes therefore a real involvement in achieving progress in the countries of origin on questions of the rights of the child. On the prevention of abandonment, the support of families of origin, the struggle against institutionalisation of children, the improvement of living conditions in the institutions, the development of national family solutions (adoption, family placements), etc. These are many areas that can fall in a larger definition of cooperation, understood as "development aid projects".
- The THC-93 : In its preparatory report on a new convention on ICA, the Permanent Bureau of The Hague Conference already emphasized "*the need for cooperation between the children's States of origin and those receiving them. Efficient working relations, based on mutual respect and compliance with strict ethics and strong professional standards, would contribute to building relations of confidence between such countries"*. This concern has been recognized so widely that it has even been incorporated into the very title of the THC-1993. But the system put in place by the THC-1993 mainly considers cooperation as a joint responsibility of States of origin and receiving States. Therefore, the conclusions of the Special Commission, which was held in The Hague in September 2005, stress «*the importance of enhancing cooperation and exchange of information between Central Authorities, public authorities, accredited bodies and any bodies and persons under article 22(2), notably with a view to promoting good practice and to ensuring that illegal and unethical procedures prior to the adoption of a child are effectively and systematically combatted*"[4].

[18] See also article 4 "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."

But it involves as well that every decision that exercises its influence upon the countries of origin must be taken in the spirit of co- responsibility. For example the question of costs for inter-country adoption should also be handled by the receiving countries: in fact it is for them to manage better control of the fees requested from future parents by demanding greater transparency both from the adoption agencies as from the countries of origin. Thus they participate in an effective struggle against the business aspects of adoption.

2.2. Are cooperation and development compatible in inter-country adoption?

For some time we have noted a sort of slipping away from the concept of cooperation into adoption towards what appears to have had more in common with development programmes. Furthermore countries of origin ask the receiving countries to "finance certain projects" (most often without specifying what kind) when they want to carry out ICA. The receiving countries on their side respond to the request in diverse fashion, either through their programmes of development or by supporting the tasks of their NGOs active in the countries of origin, or by supporting directly their adoption agencies who are running the projects.

Then in the current context of ICA around the world, which sees the number of requests for adoption largely overtaking those of children declared adoptable, certain countries of origin have well understood that they were more and more in a position to impose their will and to use ICA as a means to "make foreign currency". Be it by applying "taxes", by requesting money for humanitarian projects or simply by choosing to privilege the receiving State which would have known how to develop "the best relations" with the country of origin, one can see that marketing is developing itself in different forms[19].

But if ICA is not a response to poverty, cooperation for development certainly is. In practice, there are risks when an orphanage for example benefits from external financial support and its functioning becomes dependent on this support itself linked to ICA. In the end the institution will be practically obliged to carry out adoption so as to continue to receive help from the outside (be it donations or technical and material support), and thus to assure its operations, to pay its staff and to take care of the children who are not adoptable. "Furthermore, a State of origin hoping to ensure a steady flow of external funds to support child protection efforts may feel obliged to ensure a steady supply of children for Intercountry adoption. This negates the purpose of intercountry adoption"[20].

The 2010 Guide for good practices concerning accreditation of approved intermediaries clearly underlines that *"the question of the participation of accredited agencies in the projects of cooperation of human nature is always sensitive. At best it is an activity that is authentically altruistic that can bring great benefits for children deprived of parental care in the state of origin. At worst, it is only the means to direct vulnerable children to particular institutions with a view to inter-country adoption. It is this last kind of cooperation that must be stopped, since it is in total contradiction with an approach of inter-country adoption based on the rights of the child, and has a tendency to put the interests of adoptive parents before those of the child. The projects for cooperation that have a direct link with inter-country adoption do not present an example of sound practice".*
To be noticed that Colombia, in its last regulations, forbids the funding of humanitarian projects by AABs with resources from adoptive families in an adoption process, as well as the reception of donation prior to the adoption and in compensation for the placement of the child (see point 1.1. above).

[19] See for instance the US program in Ethiopia "USAID to partner with Pact and UNICEF to implement five-year, $100 million program" http://ethiopia.usembassy.gov/pr-2011/us-program-to-serve-500000-orphans-and-vulnerable-children-in-ethiopia.html

[20] "2010 Guide for good practices concerning accreditation of approved intermediaries", §418, p.91.

Whatever the nature of the projects may be, if, in one way or another, money continues to play a role in the development (or not) of ICA, then the risks of abuse and bad practices cannot disappear.
It would from then onwards be extremely regrettable that after struggling for years against the bad adoption practices of candidates who travelled to the countries of origins with their pockets full of money, we now arrive at the situation that these financial transfers come from the States themselves, or from AABs, under the cover of cooperation.
Of course it is not a matter here of generalising and condemning all the initiatives, public or private, which had as their targets to support in one way or another the steps taken for alternative care in the countries of origin. Of course, there are numerous professionals who act in ethical manners and in the exclusive interests of children. But nonetheless the tendency exists and the latent competition between receiving countries can only worsen it.

2.3. Preliminary conclusions on "the linking of ICA fees or contributions with funding of a child care programme"

- As a privileged observer of inter-country adoption and defender of children's rights ISS holds fast to underline that this mixture of activities is extremely delicate, if not to say dangerous.
- "It is important to emphasise that development aid (whether in the form of money, technical assistance or essential supplies of goods or services) could be, and often is, provided directly by government aid agencies and non-governmental organisations of receiving States to States of origin. It need not be provided by accredited bodies through their co-operation projects, even if funds are raised through them. **This may be the proper direction for the future – to break the link with intercountry adoption**[21]".
- "While this should be the ultimate aim, there are some successful current practices that may lead to the desired outcome regarding projects undertaken by accredited bodies. One worthy of consideration by Central Authorities and accredited bodies alike is the Swedish model which has the following features:
  • the separation of intercountry adoption from co-operation projects and other forms of aid is required by law;
  • the government aid agency sets the guidelines for grants of funds to accredited bodies for co-operation projects;
  • the accredited body must have a separate unit for co-operation projects in its structure, with separate accounts and personnel to manage the projects; and
  • the system requires close co-operation and shared responsibility between the government aid agency and the accredited body"[22].

[21] "2010 Guide for good practices concerning accreditation of approved intermediaries", §441, p.94.
[22] Idem, § 455, p.97.

3. The task of placing foreign children in adoptive families in an ethical justifiable manner

- What system gives the biggest certainty that the placement process is handled in an ethical justifiable manner and what system will ensure that the Danish adoption authorities at any time are in possession of relevant information in order to be able to react adequately when necessary? Should the task of placing foreign children in adoptive families continuously be in hands of AAB or should this task be handled on an authority level?

3.1. Independent adoption / Adoption accredited bodies

- **Independent (and private) adoptions** are today generally considered as contrary to the THC-93 principles. Several countries of origin took advantage of recent legislative reforms to ban independent adoption from their procedures (for instance Haiti, Taiwan, Ghana, etc.). However, many receiving countries have not adopted the same reform yet. This contradiction may lead to some additional pressure on countries of origin where independent adoption is not forbidden yet, in addition to the fact that those same countries are very often the ones less well equipped to resist external pressure.

- **Adoption accredited bodies** (hereafter: AAB) are very different in size, operational capacities, professionalism and even in the philosophy they defend about ICA. For many of them, the size of their organisation asks for a minimum number of ICA to be processed every year, to ensure sufficient incomes to keep their activities running. For smaller structures, the limited financial capacities prevent for frequent travels to the countries of origin, and oblige them to rely more on local partners. In addition, the limited number of children proposed to ICA creates a situation of competition among AABs which is of course detrimental to the any adoption system in place.
When abuses and illicit practices occur, the responsibilities of AABs are often difficult to identify, as the latter do not have a comprehensive control on the behaviours of their local partners.

The THC-93 and the related Guides to good practice n°2 provide for a complete range of legal requirements, standards and recommendations to be applied to AAB, their structures, responsibilities and activities. Prohibiting independent adoption is one thing, but "agency involvement is not a guarantee in itself, and the "Good Practice Guide" […] recognizes the need for stricter accreditation and authorization of agencies involved in ICA, with special attention to the professional quality and scope of the services they provide and to ensuring that their numbers are not greater than those needed"[23]. The GGP n°2 states[24] that: "The process of accreditation of bodies is another of the Convention's safeguards to protect children during the adoption process" since AAB are "expected to play an effective role in upholding the principles of the Convention and preventing illegal and improper practices in adoption".
However, accreditation remains a cornerstone of the policy that authorities of countries of origin have to set up to regulate adoption. The fact that the AABs are based in one country and work in another country does not make this process easier, especially for the authorities in the countries of origin. However, the latter have to be very clear, and very strict, about the way they want AABs to operate. Still today, many countries of origin have insufficient control mechanisms and too limited knowledge about what is going on in the field. A well organised adoption network (without being necessarily criminal) can easily take advantage of a weak system to keep a big share of the number of adoptable children.

[23] Issue paper "Adoption and children, a human right perspective", Strasbourg, 28 April 2011 https://wcd.coe.int/wcd/ViewDoc.jsp?id=1780157#P499_72660
[24] §193 and 195

On their side, receiving countries have to pay attention to worrying signs including the number of ICA per AAB, the geographical origin of the child, and the names of the parties involved (especially relinquishment witnesses, lawyers, public servant, etc.). A close monitoring of yearly activity reports provides relevant information. Obviously, the need for such services has to correspond to the foreseen number of adoptions, both domestic and intercountry. In this regard, in many countries, there are too many AABs working. This creates a situation of competition among them, which, in turn, directly influences the occurrence of bad practices and abuses.

Mediation of an AAB in a receiving State is only a safeguard if it follows certain guidelines. Preferably, an AAB should include medico-psychosocial and legal professional expertise and sufficient human and material resources to appropriately fulfil its responsibilities. The messages the AAB conveys, and its practice, should reflect its understanding of ethics in adoption matters. It should have a sound knowledge of the entire system of adoption, of the profile of the children in need of ICA, and of the family and child policy in the country of origin with which it is co-operating. It is essential that the AAB disclose its connections to other partners in the ICA system who may have the capacity to influence the AAB's activities. Furthermore, the AAB must be wholly transparent about its financial operations. Adherence to these conditions requires regular supervision of the AAB, and a systematic review of the accreditations granted on the part of both the concerned receiving States and States of origin.

3.2. Preliminary conclusions on "the task of placing foreign children in adoptive families in an ethical justifiable manner"?

Unfortunately, there is no "perfect system" able to fully guarantee the ethic of an adoption system. As developed above, there are a number of means to frame as much as possible the adoption process, but the differences of practices and actors involved in the various countries of origin make it impossible to have a single process valid "in any case".

According to the experiences developed so far, the good practices supported by The Hague and others, the following points are constitutive of a good and reliable adoption system:

- Clear sharing of responsibilities among the different actors involved (CA and AAB specifically);
- Efficient and regular communication channels among CA, AAB and diplomatic representations in the countries of origin;
- Close monitoring by the CA on the files of the adopters, even if the procedure in the countries of origin are managed by AAB;
- In-depth knowledge of the countries of origin, not only in terms of adoption legal procedures, but also of social, political, economic environment, risks of corruption, origin of children proposed to ICA, etc.
- A constant dialogue with counterparts in countries of origin;
- Regular visits to the countries of origin, especially to maintain an updated knowledge of the situation prevailing in institutions for children;
- A very strict control over the circulation of money;
- A system of double-check able to confirm the adoptability of the child proposed, taking place before the acceptance of the matching;
- A professional management of AABs, thanks to the presence of well-trained staff, multidisciplinary team and people aware of the risks of ICA contemporary practice.

4. The construction of an intensified supervision in the field of ICA

➢ What are the receiving countries' strategies?

4.1. Support to AABs

Receiving countries have different politics in terms of financially supporting their AAB: some do provide a financial support (like Belgium, France, Iceland, Luxembourg, Norway), but some others don't. Public sponsorship is positive in a sense that AAB are less exposed to financial constraints in their daily activities, and do not have to proceed with a minimum number of files per year to cover their budget. However, this is sometimes not sufficient to allow for a strict control over the activities developed in the countries of origin, in particular the role of local correspondents.

Some countries also experienced the creation of public AAB (like France and Italy). But in France for instance, the *Agence Française d'Adoption* was recently severely criticized by the *Cour des Comptes* for not being able to do enough in consideration of the budget allocated to the organism[25].

4.2. Capacities of the central authority

Operational capacity of central authorities varies greatly from one receiving country to another. To a certain extent, this reflects the political will of a given country to support ICA and give to the different actors the means necessary to answer adoption requests at best. By allocating sufficient budget for travelling abroad and inviting foreign representatives, by nominating the head of the CA "ambassador" (in France and USA), or by financing "cooperation programs", receiving countries try to maintain a certain volume of ICA per year. However, one can have some doubts about the efficiency of such a policy, as even wealthy CA do not manage to increase, neither keep constant, the annual number of ICA.

Some receiving countries took advantage of the ratification of THC-1993 to set up a specialized CA, with strong capacities to control adoption procedures (like Italy) or to limit the number of intervening parties (Norway). However, as underlined in the Terre des Hommes report, when comparing 6 receiving countries[26] "the composition and skills of Central Authorities are very unevenly regulated from one country to another. In most of them, the Central Authority fails to exercise effective or preventive control over all situations of ICA, or only does so after matching has taken place, once the child and prospective adoptive parents have already initiated the process of reciprocal bonding. The Hague Convention, however, identifies the Central Authority as the body fully responsible for all international adoptions carried out in connection with its own country".

4.3. Delegation of competencies

Another strategy consists in relying more on AABs and NGOs, by taking advantage of those which have cooperation / humanitarian programs in developing countries[27]. The fact that these organisations are well rooted in countries of origin allows for a better understanding of the ICA situation prevailing in the latter, for a quicker access to information and a better capacity to react in case of problems. However, the combination of development aid with ICA is not without raising other kind of issues, as demonstrated by the Hague Guide to Good practices n°2 (see also chapter 2 above) .

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[25] See : http://www.lemonde.fr/societe/article/2014/02/11/l-agence-francaise-de-l-adoption-dans-le-viseur-de-la-cour-des-comptes_4364086_3224.html

[26] France, Germany, Italy, Norway, Spain, Switzerland. *"Adoption: at what cost? For an ethical responsibility of receiving countries in Intercountry adoption"* I.Lammerant, M.Hofstetter, Terre des Hommes, 2007

[27] This strategy is particularly well developed in Italy.

4.4. Politics

ICA is sometimes a political topic, an approach that can directly influence the development of ICA. The position of various receiving countries after the earthquake in Haiti is very illustrative in this case. As noted in the 2010 ISS report "within five days of the earthquake, ten countries that had taken political stances to expedite transfer and/or adoption procedures made public announcements to that effect. These countries included Belgium, Canada, France, Germany, Luxembourg, the Netherlands, Switzerland and USA. In stark contrast to these ten countries, at least 30 countries from across the regions made explicit statements against ICAs from Haiti after the earthquake. These countries heavily relied upon the international standards demanding restraint and a certain time to elapse before such alternatives should be investigated. It is important to note that countries such as Austria, Australia, New Zealand, Sweden, United Kingdom, Denmark, Norway, Italy, Spain etc. had taken specific stances not to undertake adoptions in Haiti prior to the earthquake due to a lack of safeguards"[28].

In the USA, there is on the one hand a very strong lobby in favour of ICA, very active in the highest level of the State (the Congressional Coalition on Adoption Institute[29]), but on the other hand, ICA is mainly considered as a "private matter", a position that often justify the very weak control over AAB activities and ICA procedures.

But in general, political interferences are much more discreet, making ICA a topic to be discussed during cocktails…

4.5. Good practices proposal

In its report[30], the NGO Terre des Hommes proposes the following recommendations in terms of good practices for central authorities:

- To define clearly, in an official charter of ethical practices binding on the government, the Central and competent Authorities, and the accredited bodies, the ethical approach chosen by the country in matters of Intercountry adoption, and to communicate this charter to the countries of origin;
- to recognize the right of the Central Authority (preferably federal), in collaboration with foreign diplomatic and consular bodies and for each concrete intercountry adoption, to exercise all legal powers of monitoring, decision and verification, on legal, administrative, ethical and psychological levels, at the very latest at the time of matching;
- to acknowledge the Central Authority's (federal) overall competence in coordinating a global policy on intercountry adoption with countries being a party to the Convention or not, including dynamic international contacts (covering visits to countries of origin, well-grounded international exchanges, as well as the denunciation of bad practices and the possible suspension of procedures with the countries of origin concerned), and to include the coordination, training, supervision and control over the active protagonists in each country, the authorization and control over accredited bodies and public information;
- to impose on its diplomatic representatives in the countries of origin the specific mission of reporting bad practices and suspected child trafficking or violations of their rights to the Central Authority (federal), in cooperation with the diplomatic representatives of other receiving countries;
- to set up each Central Authority by taking into account its needs as to the number, specialization, initial and further training, multidisciplinarity (social work, psychology, law and medicine) and supervision of its staff;

[28] «Haiti, Expediting intercountry adoptions in the aftermath of a natural disaster... preventing future harm". Available at: http://www.iss-ssi.org/2009/index.php?id=49

[29] http://www.ccainstitute.org

[30] *"Adoption: at what cost? For an ethical responsibility of receiving countries in Intercountry adoption"* I.Lammerant, M.Hofstetter, Terre des Hommes, 2007, p.6-7

- to link the Central Authority to an administrative environment and to grant it the necessary autonomy to operate on a multidisciplinary and international basis (including contacts with consular and diplomatic posts) in the superior interests of children and without pressure from politicians or by sending clearly worded messages issued by political and administrative authorities, to raise the awareness of the population, media and professionals
- by sending clearly worded messages issued by political and administrative authorities, to raise the awareness of the population, media and professionals to the number and profile of children genuinely in need of international adoption: the right of adoption does not exist nor does the right to adopt a young healthy child exist;
- to encourage the adoption of children with special needs, through positive consciousness-raising measures, psycho-social support, and financial support if required.

5. Comparison of receiving countries' practices

➢ The transmission of files

All kind of options exist and are practiced regarding the transmission of files between countries, for instance:

- From CA to CA, most often via private post mail providers (DHL, FedEx, etc.);
- From CA to CA, via diplomatic representations in the country of origin;
- From AAB to CA, sometimes with an intermediary person in the country of origin receiving the file and then depositing it to the CA;
- From CA to CA, via emails, the original documents being brought with the PAPs when travelling to the country of origin.
- Etc…

As mentioned in the GGP1, these very practical aspects are often subject to bilateral agreement between both CA, in application of article 39/2 THC-1993.

➢ The cooperation with children's homes

Here again, practices vary greatly from one country to another, and even among regions, AABs, etc.
Theoretically, there should not be direct cooperation between actors of the receiving State and children's homes. The latter are under the responsibility of the country of origin, and the local authorities should be in a position to clearly identify which children are in need of ICA. However, it is also true that close contacts with some children's home may be a good way to keep an open eye on the situation prevailing in a country of origin, and to have the possibility to react promptly in case of problem.
This option is for example chosen by the CA of the French speaking region of Belgium. By developing close relationships with a limited number of institutions in certain countries, the CA is in a better position to monitor as closely as possible the files of both the adoptable child and PAPs. Of course, the CA cannot interfere in the questions related to adoptability, but once the matching is proposed, the CA can have a good follow up, not only in terms of procedure, but also in case of problems like health issues, sudden political decision (suspension of ICA for instance), etc… It is clear that, this kind of set-up requires good communication channels and regular visits.

The opposite example also exists: several AAB have "privileged" connections with children institutions, and thanks to the material support they provide, they get preferences when matching proposals arise. The local authorities then only confirm the matching, which is contrary to THC-1993.

➢ The matching procedure

The Terre des Hommes report also presents a thorough review of practices among receiving countries. The extract below relates to the preparation of PAPs, the matching and the role of the authorities and entities involved.

> The fundamental stage for the future of the child and the adoptive relationship is the matching. This means the identification, for each child in need of adoption, of the best prospective adoptive parents. The decision is taken either by the accredited bodies of the receiving countries, or by the authorities of the country of origin (who are responsible for the child), and then confirmed by the approached prospective adopters and the authorities of the receiving country. All the controls of the legitimacy of the adoption, especially the adoptability of the child, the suitability of the prospective adoptive parents, and the trustworthiness of the intervening parties, should, in principle, happen before the matching. After this point, the process of reciprocal attachment begins for the child and the adoptive parents, and most authorities and courts hesitate to turn back the clock. It is thus regrettable that these controls, especially those carried out by the Central Authorities of the receiving country, frequently take place only after the matching: they are thus largely futile.

Article 29 of the Hague Convention constitutes a fundamental guarantee for a successful matching process: direct contact between the prospective adoptive parents and the parents of origin or the guardians of the child is not permitted before verification of the adoptability of the child and of the suitability of the prospective adoptive parents. This guarantees an evaluation conform to the interests of the child, as well as the freedom of consent of the child's parents or guardians.
This article must apply within the framework of private adoption. Nevertheless, current laws or practices in receiving countries party to the Hague Convention (Germany, Spain, France and Switzerland), do not systematically prohibit direct contact in their relationships with non-contracting states of the Hague Convention.

In **Spain**, the suitability of prospective adoptive parents is verified by the child protection services of the Autonomous Communities, which provide a certificate of suitability. In case of refusal, the prospective adoptive parents may have recourse to judicial appeal.
The adopters then have free choice between private adoption and adoption through accredited bodies. The Central Authorities of the Autonomous Communities handle intercountry adoption with all countries except China. Having requested a unique intermediary, China deals with the Federal Central Authority.

In **France**, prospective adoptive parents contact the Children's Social Assistance Services of their department. The relevant adoption office sets up a demand for "accreditation" (i.e. the verification of suitability) through a social enquiry and psychological investigations. If the candidates are judged to be suitable, the accreditation is provided for five years, and valid for the adoption of one or more children at the same time. The adopters then have free choice between private adoption or through an accredited body. At the end of the procedure in the country of origin, the adopters submit a visa application for the child to the French consulate competent in the territory. The visa is issued after consultation and in agreement with the Central Authority.

In **Italy**, the Minors' Tribunal is competent to receive the request for a certificate of suitability for prospective adoptive parents. The judge transmits this request and the relative documents of the candidates to the competent social services. An enquiry then determines the adopters' capacity to receive a child, and its conclusions are transmitted to the Minors' Tribunal by the social services. The tribunal then delivers a decision of suitability, or a decision attesting the non-existence of the qualities necessary for an adoption. This decision is then sent to the Italian Central Authority and the accredited body chosen by the prospective adopters. The accredited body assists the adopters and monitors the entire procedure. It is responsible for the identification of the child in the chosen foreign country. In exceptional cases, the accredited body accompanies the adopters in the child's country and monitors them during the phase of first contact. If the meetings conclude with a positive estimation by the authorities of the child's country of origin, the accredited body transmits the records and the reports on the meetings to the Italian Central Authority, which takes care of their conservation. Finally, the Central Authority authorizes the entry and residence of the child in Italy.

In **Norway**, the adopters have to make contact with their local municipality (Social and Child Welfare Office), for registration as candidates. This service then produces a social report, with its favourable or unfavourable opinion on the authorization to welcome a child. When the file is complete, the social service is responsible for sending it to one of the five regional offices of the National Office for Children, Youth and Family Affairs, which grants or refuses the authorization. After authorization, unless the prospective adoptive parents have personal links with the country where they wish to adopt, an accredited body is required to act as an intermediary for the adoption.

In **Switzerland**, the Cantonal Central Authorities play an important role throughout the procedure for an adoption in states parties to the Hague Convention. In general, they are competent for everything requiring direct contact with prospective adoptive parents. These services are responsible for providing information on the current state of intercountry adoption, for evaluating the suitability of the prospective adoptive parents, and for the authorization to receive a child in view of his/her adoption. The Cantonal Central Authorities are also responsible for the files sent to the child's country of origin, as well as for the file on the child proposed for adoption by the country of origin. These documents must be transferred through the Federal Central Authority which verifies the file for its formal accuracy. The Federal Central Authority does not monitor intercountry adoptions with non-contracting states to the Hague Convention. The latter are thus the sole responsibility of the

Cantonal Central Authorities, which are responsible only for the verification of the candidates' suitability to adopt and for the authorization of the child to enter Switzerland. The accredited bodies, whose intervention is only optional and whose missions are not legally recognized, accompany the adopters together with their foreign partner responsible for the identification and preparation of the child.

In **Germany**, the public adoption services and the private ones are responsible for the principal tasks of the procedure. They evaluate the candidates, establish the file on the candidates, and examine the proposal of a child. The transmission of the adopters' files to the countries of origin does not have to pass through the Federal Central Authority. The latter only has a role at the request of the prospective adoptive couple, for adoptions governed by the Hague Convention.

In conclusion, we note that although the framework of the procedural steps is comparable in the different European countries, the division of responsibility between the State and the accredited bodies varies considerably. This has important consequences for the quality and systematicity of some services, especially in countries where private adoption is widely practiced.

6. Comparison of countries of origin practices

Country of origin Within The Hague	Who performs the matching?	Who's in charge of determining the adoptability of the child?	Is the adoption decision made by an administrative body or a court?
China	The CA authorizes the China Centre for children's welfare and adoption to perform the functions in arts. 15-21 of the THC-1993.	The CA authorizes the China Centre for children's welfare and adoption, to perform the functions in arts. 15-21 of the THC-1993[31].	By an administrative body. The China Centre for children's welfare and adoption (CCCWA)
Colombia	All Colombian adoptions are managed through the "*Instituto Colombiano de Bienestar Familiar*" or an authorized adoption institution (known in Spanish as "Institución Autorizada para desarrollar el Programa de Adopciones" (IAPA)).	Adoption proceeds when: - there is a declaration of adoptability issued by a Family Advocate - or the adoptability has been declared by a Family Judge	The Colombian adoption process has two stages, an administrative process (with ICBF or an IAPA) and a judicial process before a family judge. ICAs are only considered full and final in Colombia after the family judge issues the final adoption decree, and the certificate of conformity issued by ICBF.
Philippines	The competent body is the ICA Placement Committee (ICPC), which exclusively conducts the matching process and recommends to ICAB (ICA Board) approval of matching proposals.	An adoptable child is defined as one who has been voluntarily or involuntary committed to the Philippines Department of Social Welfare and Development (DSWD).	Adoption proceedings are partially administrative (e.g. declaration that the child is available for adoption) and judicial (e.g. pre-adoptive placement decision).
India	The Recognized Indian Placement Agency (RIPA) shall be responsible for assigning, referral and placement of the child.	Any orphan, abandoned or surrendered child can be adopted following the due procedure laid down in the Guidelines if a Child Welfare Committee declares such child legally free for adoption.	By a court To finalize an adoption decision the RIPA needs to obtain (amongst other things) a Court Order for ICA of the child from the competent court in India.
Bulgaria	Within 60 days after the entry of the children in the register, the Council for International Adoptions shall consider the applications to determine the most suitable PAP. The council on ICA shall make a proposal to the Minister of Justice to determine the most suitable PAP. The Minister shall express an opinion on the proposal within 14 days.	Ministry of Justice: Department of International Legal Child Protection and ICA	By an administrative body Concerning ICAs, where consent is given, the Ministry of Justice shall approve the adoption.

[31] See point 1.1. above for criticisms about the matching process in China.

Country of origin Out of The Hague	Who performs the matching?	Who's in charge of determining the adoptability of the child?	Is the adoption decision made by an administrative body or a court?
Ethiopia	Accredited adoption bodies or agencies referred to as adoption service provider organizations (ASPO).	Accredited adoption bodies or agencies.	By a court An agreement for adoption shall become effective once approved by the court.
Russia	There are no adoption agencies in Russia. Only foreign adoption organizations are permitted and must obtain approval from the Ministry of Education and Science. The administration ("regional operator") proposes children's profiles to PAPs through the facilitator or the Accredited foreign body.	To adopt a child, it is necessary to obtain the consent of his parents, or guardians, or of the guardianship and trusteeship body. Consent must be expressed in an application certified notarially or by the head of the institution in which the child is placed and may also be expressed directly in the court, while instituting the adoption (art. 129.1 FC).	By a court. Adoption is endorsed by the Supreme Court of the Republic, the court of a territory, a region, a court of city of federal importance, the court of an autonomous region or autonomous district according to the place of domicile or residence of the child.
South Korea	The head of an adoption agency may initiate a process of overseas adoption in case it could not find any suitable adoptive family in Korea. The following organizations may investigate the qualifications of a prospective adoptive parent (for the matching): (i) Governor of a Special Self-Governing Province, or the head of a *Si/Gun/Gu* having jurisdiction over the residence of a prospective adoptive parent; (ii) The head of an adoption agency; or (iii) The head of a child counselling agency.	When a child is placed in an adoption agency for adoption, the head of the adoption agency shall become a guardian of the child from the date when the child is taken to the agency either by his parents or by the institution, which takes the custody of the child till the adoption process is completed. The following organizations may confirm the qualification of a prospective adoptive child: Governor of a Special Self-Governing Province, or the head of a *Si/Gun/Gu* (referring to the head of an autonomous municipality) having jurisdiction over the domicile of a prospective adoptive child.	By a court. In case the head of an adoption agency is requested by a foreign national residing overseas to arrange the adoption of a Korean child and wishes to proceed with the overseas adoption, he shall file a petition with the Family Court for an adoption order with a letter of emigration order for the child issued by the Minister of Health and Welfare attached to the petition letter. When the adoption order is made, the adopting parents or the adopted child shall register the adoption, along with a written order of the Family Court attached thereto, as determined by the Act on the Registration, etc. of Family Relationship.

Country of origin Out of The Hague	Who performs the matching?	Who's in charge of determining the adoptability of the child?	Is the adoption decision made by an administrative body or a court?
Ukraine	Once the PAPs have selected a child's file they are interested in, a competent adoption authority's member of staff will contact the director of the facility where the child is place in order to obtain updated details of the child's situation and health. If the PAPs confirm their interest, the competent adoption authority will issue a letter of referral allowing them to meet this specific child.	According to the Ukrainian Family Code, any person who is aware of an orphan or a child without parental care must submit information about the child's situation within seven working days to the corresponding departments of state administrations. The child may be temporarily placed in shelters. According to the Children Act, the child should then be prepared to return to his family and if it is not possible, he/she should be placed according to the decision taken by the Custody and Care authorities. The responsibility for orphaned children and children deprived of parental care shall be transferred to these authorities, who will decide on the appropriate care solution: foster family, adoption, family-type home or residential placement.	By a court (judicial decision). Between 10 and 14 days after having selected a child, the file for the case is presented to a judge in the region where the child lives. The power to approve or deny an adoption remains solely with an individual judge. The judge's decision is then based on a review of various documents relating to each individual adoption case during the court hearing. As a general rule, the judge's decision is announced and issued the day of the hearing. However, it does not take effect for ten days.
DRC Congo	In the absence of legal regulations regarding matching, the latter takes place directly within orphanages.	"There are many complex reasons why children may be deprived of their direct family environment. Although Congolese law makes a distinction between the categories of children concerned, only individual monitoring of each child would make it possible to ensure that the child's personal status corresponds with the action taken by the authorities. Yet, since the administrative and social resources available are insufficient, it becomes easy to declare a child an orphan or abandoned, even if that is not the case"[32].	When the prospective adoptive parent has secured the necessary consents and the file is ready, they must request an open hearing with the Tribunal de Paix (or children's court) in the area where the child resides, and submit their file as required. The judge approves foreign prospective adoptive parents and verifies that the consents are genuine.

[32] « Child protection and ICA in DRC Congo » mission report, ISS/IRC 2013, p.16

Table 1: number of ICA for the 12 first receiving countries (2005 – 2012)

	2005	2006	2007	2008	2009	2010	2011	2012
U.S.A[1]	22728	20679	19613	17433	12753	11058	9319	8668
Italy	2874	3188	3420	3977	3964	4130	4022	3106
Spain	4136	3977	3162	3271	3017	3504	1995	1569
France	5423	4472	3648	3156	3006	2891	2560	1669
Canada[2]	1871	1535	1712	1916	2129	1970	1785	1367
Germany[3]	1453	1388	1432	1251	1025	980	934	801
Netherlands	1083	879	800	793	912	655	538	466
Sweden	1185	816	782	767	682	705	528	488
Switzerland[4]	586	448	429	395	498	419	338	219
Norway	389	410	394	367	349	388	367	314
Denmark	585	576	568	440	441	222	215	149
Australia[5]	582	448	426	304	344	353	297	231
Total	42895	38816	36386	34070	29120	27275	22898	19047

Table 2: number of ICA from the first 25 countries of origin (2010-2012)

Country of origin	2010	2011	2012
1.China	4672	4098	3998
2.Ethiopia	3977	3144	2648
3.Russia	3158	3017	2442
4.Colombia	1549	1522	901
5.South Korea	991	920	797
6.Ukraine	1091	1054	713
7.DRCongo	166	339	499
8.Philippines	413	472	374
9.India	473	688	362
10.Bulgaria	230	259	350
11.Brazil	373	359	337
12.Taiwan	310	311	291
13.Haiti	1361	142	262
14.Thailand	124	258	251
15.Nigeria	236	218	238
16.Poland	307	304	236
17.Vietnam	1243	620	216
18.USA	147	97	178
19.Ghana	128	107	172
20.Hungary	117	154	145
21. Mali	123	154	127
22.South Africa	71	120	81
23.Latvia	120	116	59
24.Central African Republic	12	19	43